

Department of the Interior  
Bureau of Land Management

Notice to Lessees and Operators of Onshore Federal and Indian  
Oil and Gas Leases Within the Jurisdiction  
of the Montana State Office  
NTL-MSO-1-85

Cultural Resource Surveys

I. Introduction and Purpose

In accordance with the National Historic Preservation Act of 1966, the Antiquities Act of 1906, and the Archaeological Resource Protection Act of 1979, the Federal Surface Management Agency (SMA) must assure that operations on oil and gas leases under its jurisdiction are conducted with due regard for survey, evaluation, and mitigation of disturbances to cultural resources. All operations which are conducted on onshore Federal and Indian oil and gas leases must conform to the requirements of this Notice, and any additional Tribal ordinances or codes that apply, as well as those contained in the Oil and Gas Operating Regulations, 43 CFR 3160, Onshore Oil and Gas Order No. 1; National Register of Historic Places, 36 CFR 60; Determinations of Eligibility for Inclusion in the National Register of Historic Places, 36 CFR 63; and Protection of Cultural and Historic Properties, 36 CFR 800.

The purpose of this Notice is to provide guidelines to lessees/operators when they are required to conduct cultural resource surveys. The intent of this Notice is to provide a basis for consistency among SMAs responsible for administration of cultural resource protection as it pertains to oil and gas operations; to help secure timely cultural resource clearances in order to minimize delays in obtaining approvals of Applications for Permit to Drill (APD) or other proposed lease operations; and to allow for project planning to avoid adverse situations that may be created by imminent lease terminations, offset discoveries, options, farm-out agreements and rig availability.

II. General Information

These procedures explain the SMAs responsibility to consider the potential effects on cultural resources caused by operations on a lease. Cultural resource survey, evaluation, and mitigation may be required, depending upon the nature of the operation and extent of possible damage to significant cultural resources.

Need for survey, definition of procedures for survey, evaluation of significance, and development of mitigation measures are determined by the SMA in consultation with the State Historic Preservation Officer and, where appropriate, the Advisory Council on Historic Preservation. Regional differences in cultural resource methods and techniques exist because of environmental and topographic variation, and differences in local

prehistoric and historic cultural development. Site significance may also differ regionally for similar reasons.

Individual SMAs may develop specific guidelines consistent with this NTL and Onshore Oil and Gas Order No. 1 to meet local conditions, concerns, and issues.

Lessees/Operators should obtain any specific guidance at the appropriate field office of the involved SMA.

The SMA is responsible for considering "the area of the undertaking's potential environmental impact" (36 CFR 800.2(o)), including both direct and indirect effects. However, if the SMA requires the lessee/operator to conduct a cultural resource survey, the lessee/operator will only be responsible for conducting a survey of the area of proposed lease operations. The SMA will monitor for vandalism or other indirect effects, and will conduct any necessary cultural resource evaluation or Protective measures associated with such indirect effects, but shall review the proposed lease operations within the time frame requirements of Onshore Oil and Gas Order No. 1. The lessee/operator is responsible for informing employees that vandalism, including artifact collection and unauthorized site disturbance, is illegal and punishable under the Archaeological Resource Protection Act and other statutes.

### III. Field Procedures

#### A. Determination of Need for Survey

In order to avoid unnecessary delays or expense, the lessee/operator should contact the appropriate SMA at least 15 days prior to submission of the APD or Notice of Staking (NOS) to determine if a site-specific cultural resource survey is required prior to entry on the lease for lease operations. If a survey is required, the survey report is to be submitted as provided for in Onshore Oil and Gas Order No. 1. If the SMA has reason to believe that properties listed or eligible for listing in the National Register of Historic Places (NRHP) are present in the area of proposed lease operations, survey will be required. Situations exist when the SMA may determine from surveys of the area or other available data, that there is no reason to believe that listed or eligible properties are present, and a survey will not be required. These include, but are not limited to the following:

1. Previous natural ground disturbance has modified the surface so extensively that the likelihood of finding cultural properties is negligible;
2. Human activity within the last 50 years has created a new land surface to such an extent as to eradicate traces of cultural properties;
3. Existing probability or equivalent survey data are sufficient to indicate that the specific environmental situation did not support human occupation or use to a degree that would make further survey information useful or meaningful;

4. Survey at an intensive level has previously been performed, and records adequately documenting the location, methods, and results of the survey are available;

5. Natural environmental characteristics are unfavorable to the presence of cultural properties (such as recent landslides or rock falls).

In addition, a survey will not be required if the nature of the proposed action is such that no impact can be expected on cultural resources eligible for or listed on the NRHP

#### B. Survey Area

If a survey is required of the lessee/operator as determined by the involved SMA, then prior to any surface disturbance, the lessee/operator is to engage an authorized cultural resource professional to conduct a survey in the area of proposed lease operations. In order to assure compliance with the requirements for protection of cultural resources (36 CFR 800), the minimum survey area shall be the area of proposed lease operations. The area of proposed lease operations is defined in the surface use plan, and shall include all areas to be physically disturbed by earthmoving activities, as well as areas where vehicle movement, off-loading of equipment, rehabilitation, etc., may be reasonably anticipated. For consistency among SMAs, a standard 10-acre survey area centered on the well site, plus access road and ancillary areas is the norm. Lessees/Operators are encouraged to notify the BLM and the involved SMA if they intend to survey less than 10 acres. Lessees/Operators that choose to survey less than the norm assume a greater risk of incurring possible delays and expense due to the need for an additional survey resulting from the relocation or adjustment of the well site, or inadequate survey area or report. The lessee/operator may choose to survey areas larger than 10 acres to provide a greater degree of flexibility for siting of facilities and to further reduce the possibility of an additional survey.

#### C. Authorized Cultural Resource Professionals

SMAs evaluate and issue permits to cultural resource professionals in accordance with appropriate Federal guidelines. A list of known cultural resource specialists or firms who can readily obtain or currently hold the necessary cultural resource permits, may be obtained from the appropriate local office of the involved SMA. Cultural resource consultants contracted by an operator must consult the involved SMA prior to conducting any field work.

#### D. Split Estate

The Bureau of Land Management or other SMA, if appropriate, has the responsibility to consider the effects of oil and gas undertakings on cultural resources on private surface over leased Federal minerals. The BLM or other

involved SMA shall determine if a survey, evaluation, or mitigation on significant cultural resources is appropriate. Copies of relevant survey and mitigation reports will be available to the landowner, and all collected artifacts will be returned to the landowner after a reasonable study period.

When a survey is required, the lessee/operator will be responsible for obtaining access to the property of the surface owner. However, if the private surface owner objects to either the survey or mitigation procedures, these actions will not be performed. A written statement to that effect should be obtained from private surface owner; but, in any event, documentation of the reasons for the lack of survey and mitigation will be submitted by the lessee/operator to the BLM or the involved SMA. Inability to obtain permission to conduct a survey when required or to perform necessary mitigation does not relieve BLM or other involved SMAs of federal agency responsibility required by Section 106 of the National Historic Preservation Act (as implemented in 36 CFR 800). The BLM and/or other involved SMA must still consult with SHPO and, as necessary, the Advisory Council on Historic Preservation to determine what steps are necessary to fulfill its legal obligation. Lessees/Operators should be aware of the potential for delays in project approval if an extended consultation is needed.

When the private surface owner refuses entry for the purpose of survey, the lessee/operator shall use its best efforts to conduct its approved operations in a manner that avoids adverse effects on any properties which are listed, or may be eligible for listing, in the NRHP.

#### E. Snowcover

For consistency among SMAs, at least 70 percent of the area of proposed lease operations must be visible at the time of survey. Exceptions may be allowed in situations such as leases expiring within 30 days of the initiation of the NOS or APD process, offset discovery, options, farm-out requirements and rig availability. However, there is no guarantee in any particular situation that exceptions will be allowed. The major factor in this SMA decision is the potential for adverse affect of the proposed action on cultural resources in the area which are listed or eligible for listing on the NRHP. Lessees/Operators are encouraged to survey an adequate number of locations when the ground is free of snow to support their winter drilling program, considering alternate sites and other contingencies.

#### F. Reporting, Evaluation, and Mitigation Measures

1. Reporting - The report, acceptable to the SMA, shall be submitted by the operator and shall: document survey methods; describe the survey area, including a map of the survey area (7.5 minute USGS quad sheet preferred) and cultural resource site maps at an appropriate scale;

document cultural resource sites, site evaluation, and proposed mitigating measures.

2. Evaluation - Cultural resources located during the survey which are not being avoided shall be evaluated by the SMA using NRHP criteria (36 CFR 60) to determine the need for possible mitigation. Evaluations shall be sufficient to determine eligibility for inclusion in the NRHP and to make decisions concerning mitigation.

3. Mitigating Measures - The primary mitigating measure should be avoidance of the site. If this cannot be accomplished, other measures may be required, including recovery of the cultural resources. When cultural resource sites are not present or are to be avoided, the reports will be processed by the SMA within the timeframe requirements established by Onshore Oil and Gas Order No. 1. If cultural resource sites eligible for the NRHP are present but cannot be avoided, the SMA must consult with the State Historic Preservation Officer and Advisory Council on Historic Preservation. This consultation process may cause delay in or denial of operations as proposed.

#### G. Previously Undiscovered Cultural Resource

Whether or not a survey has been done and notwithstanding that operations are being conducted as approved, the lessee/operator shall immediately notify the BLM and involved SMA if previously undiscovered cultural resources are observed and shall avoid operations that would result in destruction of these resources. Disturbance of such discoveries is not allowed until the operator is permitted to proceed by the BLM or involved SMA.

/s/ Dean E. Stepanek

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Dean E. Stepanek  
State Director

June 4, 1985

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Date